

★ OCT 15 2015 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Maria Ligia MERCADO,

Plaintiff,

- v. -

CHOYANG MEDICAL CO. LTD., d/b/a
CHOYANG MEDICAL INDUSTRY LTD.,
JOHN DOE and JANE DOE d/b/a CHO YANG
HEALTH EQUIPMENT, CHO YANG DANA
U.S.A. CORP., CHOYANG DANA USA CORP.,
HYUN CHUNG KIM, CHOYANG NEW
YORK, INC., and XYZ DISTRIBUTION INC.,

Defendants.

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GERSHON, United States District Judge:

Plaintiff Maria Ligia Mercado alleges that she suffered injuries during a trial use of defendants' massage bed. On September 30, 2009, I granted plaintiff's motion for judgment by default against defendants ChoYang Medical Co. Ltd., d/b/a ChoYang Medical Industry Ltd., John Doe and Jane Doe d/b/a ChoYang Health Equipment, Cho Yang Dana U.S.A. Corp., and Choyang New York, Inc. I also referred the determination of plaintiff's damages to the Honorable Viktor Pohorelsky, magistrate judge, who recommended that plaintiff be denied relief without prejudice to her renewing her application with the support of authenticated medical records and a treating physician's affidavit. By order dated November 3, 2011, I adopted Judge Pohorelsky's recommendation in its entirety.

In the months that followed, plaintiff repeatedly requested extensions of time to renew her damages application, causing substantial delay, and failed to adhere to several court

deadlines. As a result, Judge Pohorelsky recommended on April 14, 2014 that the action be dismissed for failure to prosecute. In her objection to that recommendation, plaintiff finally submitted the medical documentation she long ago had been instructed to procure. Given the strong judicial preference for resolving cases on the merits, I concluded that, with the record now sufficiently developed, dismissal of the action was not warranted and that plaintiff's damages application should be referred back to Judge Pohorelsky for resolution. I simultaneously instructed plaintiff's counsel, Gary Certain, Esq., to show cause why he should not be sanctioned \$1,000 for failing to comply with court deadlines.

In a thorough report and recommendation dated July 9, 2015, Judge Pohorelsky recommended that plaintiff be awarded \$500,000 in pain and suffering damages. No objections to the report and recommendation have been filed. Finding no clear error in Judge Pohorelsky's damages calculation, I now adopt his July 9, 2015 report and recommendation in its entirety.

I also conclude that sanctions will not be imposed on plaintiff's counsel at this time. Although counsel's response to my show-cause order in no way justifies his inattention to court deadlines, I am confident that counsel has been sufficiently reminded of his obligation to adhere to the schedule imposed by the court and, when necessary, to request extensions in a timely manner. This, however, is the final reminder. To the extent further proceedings are conducted in this action, any violation of a court order by plaintiff's counsel will result in monetary sanctions.

In sum, the Clerk of Court is directed to enter judgment for plaintiff and against defendants ChoYang Medical Co. Ltd., d/b/a ChoYang Medical Industry Ltd., John Doe and Jane Doe d/b/a ChoYang Health Equipment, Cho Yang Dana U.S.A. Corp., and Choyang New York, Inc., jointly and severally, in an amount of \$500,000.

SO ORDERED.


s/Nina Gershon

NINA GERSHON
United States District Judge

Dated: October 14, 2015
Brooklyn, New York